IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3179 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ECHJAY INDUSTRIES LTD. & 2 - Petitioners

Versus

UNION OF INDIA & 2 - Respondents

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Appearance :
MR DG TRIVEDI, for Petitioners
MR JM MALKAN, Asstt. Solicitor General of India, for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 10/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

By filing the instant petition under Article 226 of the Constitution, the petitioners have prayed to issue a writ of certiorari, or any other appropriate writ or direction to quash the order dated January 31, 1990, passed by the Collector of Customs and Central Excise, Rajkot, by which the petitioner Nos.2 & 3, who are Managing Director and General Manager respectively of the petitioner No.1-Company, are visited with penalty of Rs.25000/- and Rs.10,000/- respectively, in terms of Rule-173Q(1) of the Central Excise Rules, 1944. In the alternative, the petitioners have prayed that Rules 221 and 225 of the Central Excise Rules, 1944 be declared ultra vires the provisions of the Central Excise and Salt Act, 1944.

2. The petitioner is a Company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing “forgings and forged” products. The forgings are products made

by roughly shaping the steel by the process of rolling or forging. Prior to August 1, 1983, Tariff Item 26AA(ia) of the erstwhile Ist Schedule to the Act specifically covered “forged or rolled shapes and sections”. There was total exemption on all such forged or rolled shapes and sections, which were made from duty paid steel vide Exemption Notification dated November 30, 1963. After August 1, 1983, Tariff Item 26AA was recast and in its place, erstwhile Tariff Item 25 was legislated. The said tariff entry read “pieces roughly shaped by rolling or forging of iron or steel not elsewhere specified. The earlier exemption was also continued vide Notification dated August 1, 1983. This position continued till February 28, 1986 when the new Tariff Act was brought into force. The petitioner No.1 carried out its activities under L-4 Licence and had submitted classification lists, which were approved by the competent authorities. After the new Tariff Act came into force, Tariff Item 25(8) was recast in the form of Tariff Heading 72.08, which was identical with the wordings of the erstwhile Tariff Item 25(8). Therefore, the petitioners kept on filing

classification lists classifying their forgings under Tariff Heading 72.08. The exemption available earlier was also continued vide Notification dated August 1, 1983 as amended by Notification dated February 10, 1986. From May 29, 1986 onwards, the petitioners sought to avail of the Modvat Credit on steel used only for manufacture of forgings for railway tyres. The petitioners also filed a classification list to this effect, which was approved by the competent authorities. On September 25, 1986, the Assistant Collector of Central Excise visited the premises of the petitioner No.1-Company and effected large scale seizure of the forgings for railway-tyres. As a consequence of seizure, a show-cause notice was issued claiming that forgings for tyres fell under Chapter Heading 86.07 and not under Chapter Heading 72.08. The petitioners filed reply and contested the claim advanced in the show-cause notice. However, the Collector vide order dated January 31, 1990 confirmed the show-cause notice and imposed penalty of Rs. 15 Lakhs on the petitioner No.1 as well as penalty of Rs.25,000/- and Rs.10,000/- respectively on the petitioner Nos.2 & 3. The imposition of penalty on

the petitioner Nos.2 and 3 is subject matter of challenge in the instant petition.

3. This Court has heard Mr.D.G.Trivedi, learned counsel appearing for the petitioner and Mr.J.M.Malkan, learned Assistant Solicitor General of India appearing for the respondents, at length and in great detail.

4. During the course of hearing of the petition, Mr.Dilip C.Sampat, Assistant Manager, (Excise) of the petitioner No.1 has filed an affidavit in support of the petition mentioning, inter alia, that the order dated January 31, 1990 passed by the Collector, Customs and Central Excise, Rajkot was challenged by the petitioner No.1-Company before the Customs, Excise and Gold (Control) Appellate Tribunal, Special Bench -B, in Appeal No.E.898/90-B1, and the Tribunal had allowed the same by order dated September 30, 1993 on merits as well as holding that the demands were time-barred, against which, Civil Appeal No.3943 of 1994 was filed by the Collector of Central Excise, Rajkot before Supreme Court of India, which was

rejected vide order dated September 19, 1994 and, therefore, the petition should be allowed. It may be stated that along with the affidavit, the deponent has annexed xerox copy of order dated September 30, 1993 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, Special Bench 'B' in Appeal No.E.898/90-B1 and xerox copy of order dated September 19, 1994 passed by the Supreme Court in Civil Appeal no.3943 of 1994.

5. The copy of the affidavit filed by Mr.Dilip C.Sampat, Assistant Manager,(Excise) of the petitioner No.1, with annexures, was served on the learned counsel for the respondents. No affidavit-in-reply has been filed on behalf of the respondents controverting the averments made in the affidavit filed by Mr.Dilip C.Sampat, Assistant Manager (Excise) of the petitioner No.1-Company on March 27, 2006. As the appeal filed by the Company is allowed by the Tribunal by setting aside the order of Collector, Central Excise, Rajkot, and confirmed by the Supreme Court, this Court is of the opinion that penalty imposed on the petitioner Nos.2 & 3 cannot be

sustained. Mr.J.M.Malkan, learned Assistant Solicitor General of India, on instructions, states at the Bar that the order passed by the Collector, Central Excise, Rajkot imposing penalty on the petitioner Nos.2 & 3, which is challenged in this petition, is liable to be set aside in view of the fact that the appeal filed by the Company against the said order was allowed by the Tribunal vide order dated September 30, 1993 and the order of the Tribunal is upheld by the Supreme Court in Civil Appeal No.3943 of 1994, which was disposed of on September 19, 1994. As the Court is inclined to grant relief claimed in Paragraph-28(A) of the petition, the learned counsel for the petitioners does not press the prayer made in Paragraph-28(B) to declare that Rules 221 & 225 of the Central Excise Rules, 1944 are ultra vires the Central Excises & Salt Act, 1944.

For the foregoing reasons, the petition partly succeeds. The order dated January 31, 1990 passed by the Collector, Customs & Central Excise, Rajkot imposing penalty of Rs. 25,000/- and Rs. 10,000/- on the petitioner Nos.2 & 3 respectively under Rule

173Q(2) of the Central Excise Rules, 1944 produced at Annexure-E is hereby set aside. The prayer made by the petitioners to declare that Rules 221 and 225 of the Central Excise Rules, 1944 are ultra vires the Central Excise & Salt Act, 1944 is rejected as not pressed. Rule is made absolute to the extent indicated hereinabove. There shall be no order as to costs.

[J.M.PANCHAL,J.]

[BANKIM N.MEHTA,J.]

(patel)